

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

OCHAI XAVIER KIRK,

Plaintiff,

v.

OFFICER HILL, ET AL.,

Defendants.

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CIVIL ACTION NO. 5:19-CV-00122-RWS-CMC

ORDER

Plaintiff Ochai X. Kirk, proceeding *pro se*, filed the above-styled and numbered civil action complaining of alleged violations of his constitutional rights. The Court referred this matter to the Honorable Caroline Craven, United States Magistrate Judge, for consideration in accordance with 28 U.S.C. § 636.

Defendants answered the lawsuit and filed a motion for summary judgment based on Kirk's failure to exhaust administrative remedies (Docket No. 31). After review of the pleadings and summary judgment evidence, the Magistrate Judge issued a Report (Docket No. 33) recommending the motion for summary judgment be granted and the lawsuit dismissed.

The Court has received and considered the Report and Recommendation of the Magistrate Judge, along with the record and the pleadings. Kirk acknowledged receipt of the Report and Recommendation on June 17, 2021 (Docket No. 35). No objections have been filed by the parties. Because no objections to the Magistrate Judge's report have been filed, neither party is entitled to *de novo* review by the District Judge of those findings, conclusions and recommendations, and except upon grounds of plain error, they are barred from appellate review of the unobjected-to factual

findings and legal conclusions accepted and adopted by the District Court. 28 U.S.C § 636(b)(1)(C); *Douglass v. United Services Automobile Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

Nonetheless, the Court has reviewed the motion and the Magistrate Judge's report and agrees with the report. *See United States v. Raddatz*, 447 U.S. 667, 683 (1980) (“[T]he statute permits the district court to give to the magistrate's proposed findings of fact and recommendations ‘such weight as [their] merit commands and the sound discretion of the judge warrants.’”) (quoting *Mathews v. Weber*, 23 U.S. 261, 275 (1976)). Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge as the findings and conclusions of this Court. The above-styled civil action is therefore **DISMISSED WITHOUT PREJUDICE** for failure to exhaust administrative remedies.

So ORDERED and SIGNED this 4th day of August, 2021.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE